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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/994,443	11/27/2001	Brian D. Herr	POU92001012SUS1	9512
23334	7590	08/09/2005	EXAMINER	
FLEIT, KAIN, GIBBONS, GUTMAN, BONGINI & BIANCO P.L. ONE BOCA COMMERCE CENTER 551 NORTHWEST 77TH STREET, SUITE 111 BOCA RATON, FL 33487			PEUGH, BRIAN R	
			ART UNIT	PAPER NUMBER
			2187	
DATE MAILED: 08/09/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/994,443	HERR ET AL.
Examiner	Art Unit	
Brian R. Peugh	2187	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 19 May 2005.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-22 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 7 and 14 is/are allowed.  
 6) Claim(s) 1-3,5,8,10,11,13 and 16-22 is/are rejected.  
 7) Claim(s) 4,6,9,12 and 15 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
     Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
     Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Response to Amendment***

This Office Action is in response to applicant's communication filed May 19, 2005 in response to PTO Office Action dated March 3, 2005. The applicant's remarks and amendment to the specification and/or claims were considered with the results that follow.

Claims 1-22 have been presented for examination in this application. In response to the last Office Action, claim 6 has been amended.

The indicated allowability of claim 22 is withdrawn in view of the newly recited 35 USC 101 rejection below.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 16-22 are not limited to tangible embodiments. In view of applicants' disclosure, specification page 20, line 14-21, the medium is not limited to tangible embodiments, instead being defined as including both tangible embodiments (e.g., disk drive memory) and intangible embodiments (e.g., computer readable information in a transitory state on a wireless network). As such, the claim is not limited to statutory subject matter and is therefore non-statutory.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 5, 8, 10, 11, 13, 16-18, and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Mathews et al. (US# 2002/0133678).

Regarding claim 1, Mathews et al. teaches **allocating non-pageable pinned kernel memory for use by time sensitive data communications processing** [Fig. 5], **the method comprising the steps of: establishing a base non-pageable pinned kernel memory block** [para 0047, lines 1-4]; **accepting a request for a non-pageable pinned kernel memory buffer, wherein the request comprises a specification of a buffer size for the non-pageable pinned kernel memory buffer** [step 510; para 0049, lines 1-7; storage blocks are ‘pinned’ for use by the kernel and are not paged in any way]; **determining if the base non-pageable pinned kernel memory block contains sufficient non-pageable pinned kernel memory for the non-pageable pinned kernel memory buffer** [step 520; para 0049, lines 8-11]; **allocating, in response to a determination that there is insufficient non-pageable pinned kernel memory within the base non-pageable pinned kernel memory block, an additional non-pageable pinned kernel memory block that is at least as large as the buffer and**

**wherein the additional non-pageable pinned kernel memory block is not required to form a contiguous non-pageable pinned kernel memory section the base non-pageable pinned kernel memory block** [para. 0049-0051].

Regarding claim 2, Matthews et al. teaches **wherein the base non-pageable pinned kernel memory block, the additional non-pageable pinned kernel memory block and the non-pageable pinned kernel memory buffer are allocated by a non-pageable kernel memory allocation module** [alloc() kernel service; para 0049].

Regarding claim 3, Matthews et al. teaches **wherein the additional non-pageable pinned kernel memory block is accessed through a linked list structure** [para 0045; para 0048; the blocks are not contiguous, rather the bytes that comprise them are].

Regarding claim 5, Matthews et al. teaches **wherein the additional non-pageable pinned kernel memory buffer is received from a mass storage data server application processing module** [interpreted as a 'processors'; para 0038].

Regarding claim 8, Matthews et al. teaches **A system for allocating non-pageable pinned kernel memory for use by time sensitive data communications processing** [Fig. 5], **the system comprising: a non-pageable pinned kernel memory** [Fig. 3; para 0045]; **and a non-pageable kernel memory allocation module**

[alloc() kernel service; para 0049], **communicatively coupled to the non-pageable pinned kernel memory, wherein the non-pageable kernel memory allocation module: establishes a base non-pageable pinned kernel memory block within the non-pageable pinned kernel memory** [para 0047, lines 1-4]; **accepts a request for a non-pageable pinned kernel memory buffer, wherein the request comprises a specification of a buffer size for the non-pageable pinned kernel buffer** [step 510; para 0049, lines 1-7; storage blocks are 'pinned' for use by the kernel and are not paged in any way]; **determines if the base non-pageable pinned kernel memory block contains sufficient non-pageable pinned kernel memory for the non-pageable pinned kernel memory buffer** [step 520; para 0049, lines 8-11]; **and allocates, in response to a determination that there is insufficient non-pageable pinned kernel memory within the base non-pageable pinned kernel memory block, an additional non-pageable pinned kernel memory block within the non-pageable pinned kernel memory that is at least as large as the buffer size** [para. 0049-0051].

Regarding claim 10, Matthews et al. teaches **wherein the additional non-pageable pinned kernel memory block does not form a contiguous non-pageable pinned kernel memory block with the base non-pageable pinned kernel memory block** [para. 0048; on the bytes that comprise the block are contiguous; the blocks are not required to be contiguous].

Regarding claim 11, Matthews et al. teaches **wherein the additional non-pageable pinned kernel memory block is accessed through a linked list structure** [para 0045; para 0048; the blocks are not contiguous, rather the bytes that comprise them are].

Regarding claim 13, Matthews et al. teaches **wherein the additional non-pageable pinned kernel memory buffer is received from a mass storage data server application processing module** [interpreted as a ‘processors’; para 0038].

Regarding claim 16, Matthews et al. teaches **A computer readable medium including computer instructions for allocating non-pageable pinned kernel memory for use by time sensitive data communications processing** [Fig. 5], the **computer instructions comprising: establishing a base non-pageable pinned kernel memory block within the non-pageable pinned kernel memory** [para 0047, lines 1-4]; **accepting a request for a non-pageable pinned kernel memory buffer, wherein the request comprises a specification of a buffer size for the non-pageable pinned kernel buffer** [step 510; para 0049, lines 1-7; storage blocks are ‘pinned’ for use by the kernel and are not paged in any way]; **determining if the base non-pageable pinned kernel memory block contains sufficient non-pageable pinned kernel memory for the non-pageable pinned kernel memory buffer** [step 520; para 0049, lines 8-11]; and **allocating, in response to a determination that there is insufficient non-pageable pinned kernel memory within the base non-**

**pageable pinned kernel memory block, an additional non-pageable pinned kernel memory block within the non-pageable pinned kernel memory that is at least as large as the buffer size** [para. 0049-0051].

Regarding claim 17, Matthews et al. teaches **wherein the base non-pageable pinned kernel memory block, the additional non-pageable pinned kernel memory block and the non-pageable pinned kernel memory buffer are allocated by a non-pageable kernel memory allocation module** [alloc() kernel service; para 0049].

Regarding claim 18, Matthews et al. teaches **wherein the additional non-pageable pinned kernel memory block is accessed through a linked list structure** [para 0045; para 0048; the blocks are not contiguous, rather the bytes that comprise them are].

Regarding claim 20, Matthews et al. teaches **wherein the additional non-pageable pinned kernel memory buffer is received from a mass storage data server application processing module** [interpreted as a 'processors'; para 0038].

***Allowable Subject Matter***

Claims 7 and 14 are allowed over the prior art of record

Claims 4, 6, 9, 12, and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments with respect to claims 1-3, 5, 8, 10, 11, 13, and 16-22 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian R. Peugh whose telephone number is (571) 272-4199. The examiner can normally be reached on Monday-Thursday from 7:00am to 4:30pm. The examiner can also be reached on alternate Friday's from 7:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Sparks, can be reached on (571) 272-4201. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

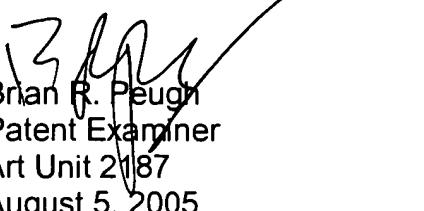
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Brian R. Peugh  
Patent Examiner  
Art Unit 2187  
August 5, 2005